REMARKS

Entry of the foregoing amendment is respectfully requested.

Summary of Amendments

Upon entry of the foregoing amendments, claims 1-25 are cancelled and claims 26-54 are added, whereby claims 26-54 will be pending, with claims 26, 48 and 51 being independent claims.

Support for amendment to the specification and the new claims can be found throughout the present specification and the cancelled claims. In this regard, Applicants point out that the change from 0.7 mPa to 0.7 MPa merely is the correction of an obvious error. One of ordinary skill in the art would immediately recognize that 0.7 mPa is an extremely low pressure in comparison to atmospheric pressure (0.1 MPa), i.e., less than 0.001 % of atmospheric pressure. It also is pointed out that one of the documents relied on in the present Office Action, U.S. Patent No. 5,388,766 recites pressures in col. 11 thereof which are also in the MPa pressure range. In this regard, it is noted that the pressure of 690 kPa mentioned at the bottom of page 3 of the present Office Action is the same as 0.69 MPa, not 0.69 mPa as indicated in the present Office Action.

Applicants emphasize that the cancellation of claims 1-25 is without prejudice or disclaimer, and Applicants expressly reserve the right to prosecute these claims in one or more continuation and/or divisional applications.

Summary of Office Action

As an initial matter, Applicants note with appreciation that the Examiner has indicated consideration of the Information Disclosure Statement filed April 6, 2004 by returning a signed and initialed copy of the Form PTO-1449 submitted therein.

Applicants further note with appreciation that the present Office Action acknowledges the claim for foreign priority under 35 U.S.C. § 119(a)-(d) and the receipt of a certified copy of the priority document.

Claim 1 is rejected under 35 U.S.C. § 112, second paragraph.

Claims 1-25 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Buisson, U.S. Patent No. 5,388,766 (hereafter "BUISSON") in view of WO 96/28132 in the form of its English language functional equivalent, U.S. Patent No. 6,607,733 to Diec et al. (hereafter "DIEC").

Claims 1-25 are rejected on the ground of nonstatutory obviousness-type double patenting as being allegedly unpatentable over claims 1-4, 6, 8 and 9 of DIEC in view of BUISSON.

Claims 1-25 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being allegedly unpatentable over claims 1-22 of co-pending application No. 10/819,781 in view of WO 96/28132.

Claims 1-25 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being allegedly unpatentable over claim 44 of co-pending application No. 10/892,159.

Claims 1-25 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being allegedly unpatentable over claims 1-38 and 45-48 of co-pending application No. 10/892,159 in view of BUISSON.

Claims 1-25 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being allegedly unpatentable over claims 1-29 of co-pending application No. 10/953,587 in view of BUISSON.

Response to Office Action

Withdrawal of the rejections of record is respectfully requested, in view of the foregoing amendments and the following remarks.

Response to Rejection of Claim 1 under 35 U.S.C. § 112, Second Paragraph

Claim 1 is rejected under 35 U.S.C. § 112, second paragraph, because the phrase "said microemulsion gel" in line 3 thereof allegedly has insufficient antecedent basis.

Applicants respectfully submit that claim 1 is cancelled, wherefore this rejection is moot.

Response to Rejection of Claims under 35 U.S.C. § 103(a)

Claims 1-25, i.e., all claims of record, are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over BUISSON in view of WO 96/28132 in the form of its English language functional equivalent, DIEC. The rejection essentially alleges that BUISSON teaches a pump atomizer similar to the pump

atomizer recited in the rejected claims and that BUISSON further teaches that the pump atomizer is for dispensing high viscosity fluid products such as, among other things, health and beauty care products. The rejection concedes that BUISSON does not teach that the high viscosity product is the oil-in-water emulsion antiperspirant composition recited in the rejected claims. In this regard, the rejection alleges that DIEC teaches a corresponding composition and that DIEC further teaches that cosmetic microemulsion deodorants can be dispensed from pump devices. The rejection further alleges that it would have been obvious to one of ordinary skill in the art to incorporate the composition of DIEC into the atomization system of BUISSON to arrive at the claimed invention.

Applicants respectfully traverse this rejection. Specifically, even if one were to assume, *arguendo*, that BUISSON teaches a pump atomizer similar to the pump atomizer recited in the rejected claims, BUISSON does not teach or suggest using this pump atomizer in combination with a microemulsion gel as recited in the present claims, let alone with an antiperspirant containing microemulsion gel. For example, in the passage from col. 10, line 40 to col. 11, line 2 BUISSON states (emphases added):

> While the improved product delivery systems according to the present invention may be utilized with virtually any fluid product, it has been found to be particularly advantageous in the cooking environment, where it may be utilized to apply pan coatings and flavor enhancers. These products are often formulated with a large percentage (80-100%) of a vegetable oil, and have viscosities typically of between about 60 and about 75 cps. Such products may also include a minor percentage of lecithin, emulsifiers, and may also include flavor enhancers and other ingredients to enhance product performance. Product formulations which have performed well with the product delivery systems of the present invention typically include approximately 88% vegetable oil, approximately 10% lecithin, and approximately 2% of an emulsifier, and have viscosities of approximately 70

> cps. Such formulations do not include any thinning agents such as water or alcohol.
>
> Other product formulations besides cooking products, particulary those of comparatively higher viscosities could be employed in product delivery systems according to the present invention. Such products include, but are not limited to: lubricating oils, liquid soaps, laundry detergents, dishwashing detergents, pretreaters, hard surface cleaners, paints, polishes, window cleaners, rust preventatives, surface coatings of all varieties, health and beauty care products such as hair sprays, etc. Other cooking and food related products besides pan coatings and flavor enhancers include, but are not limited to, liquid salad dressings, marinades, and flavored oils.

The above passage makes it clear that the atomizer system of BUISSON is intended and recommended for food applications such as the application of pan coatings (oil) and flavor enhancers. This is further supported, e.g., by col. 9, line 50 of BUISSON where it is stated that the area of particular interest is food products and by claims 3 and 12 of BUISSON according to which the product to be atomized includes a vegetable oil.

While BUISSON also mentions other products which may be dispensed and atomized, *inter alia*, "health and beauty care products", it is pointed out that the only examples of these "health and beauty care products" are hair sprays. In this regard, it is further mentioned in col. 2, lines 8-10 of BUISSON that "other products of interest include hair sprays, which also require a thin even coating for satisfactory performance."

Further, while BUISSON repeatedly refers to fluid products of "comparatively" high viscosity, BUISSON does not mention any gels, let alone microemulsion gels. Apparently, the only products of "comparatively" high viscosity that BUISSON has in mind are fluids which compared to gels have a

relatively low viscosity such as, e.g., food products comprising a predominant amount of (vegetable) oil.

To sum up, for at least all of the foregoing reasons one of ordinary skill in the art would not be motivated to atomize a cosmetic gel product, let alone a microemulsion gel product comprising a substantial amount of antiperspirant(s), by means of the device of BUISSON.

Further, DIEC fails to teach or suggest dispensing and atomizing the microemulsion gel products disclosed therein by any device which is similar to the device of BUISSON. Applicants note that in this regard the present rejection particularly relies on col. 26, lines 53-59 of DIEC. This passage of DIEC states (emphases added):

> The cosmetic deodorants according to the invention can be in the form of aerosols, that is to say preparations which can be sprayed from aerosol containers, squeeze bottles or by a pump device, or in the form of liquid compositions which can be applied by means of roll-on devices, but also in the form of microemulsion gels which can be applied from normal bottles and containers.

The above passage, while referring to pump devices in combination with cosmetic deodorants, makes it abundantly clear that these pump devices may be used only for cosmetic deodorants in the form of aerosols. For microemulsion gels (like those recited in the present claims) this passage mentions "normal bottles and containers" as the only application devices.

Accordingly, the above passage not only fails to teach or suggest the use of a "pump device" for the application of a microemulsion gel but even teaches away therefrom in that it conveys the impression that while pump devices can be

used for cosmetic preparations in the form of aerosols, they cannot be used for microemulsion gels, thereby reinforcing the impression conveyed by BUISSON.

Applicants submit that for at least all of the foregoing reasons, BUISSON in view of WO 96/28132 fails to render obvious the subject matter of any of the present claims, wherefore withdrawal of the rejection under 35 U.S.C. § 103(a) is warranted and respectfully requested.

Response to Nonstatutory Obviousness-Type Double Patenting Rejection

Claims 1-25 are rejected on the ground of nonstatutory obviousness-type double patenting as being allegedly unpatentable over claims 1-4, 6, 8 and 9 of DIEC in view of BUISSON.

Applicants traverse this rejection for the same reasons as those which are set forth above with respect to the rejection under 35 U.S.C. § 103(a) over BUISSON in view of WO 96/28132 (which is the functional equivalent of DIEC) and respectfully request withdrawal of this rejection.

Response to Provisional Nonstatutory Obviousness-Type Double Patenting Rejections

Claims 1-25 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being allegedly unpatentable over claims 1-22 of co-pending application No. 10/819,781 in view of WO 96/28132, over claim 44 of co-pending application No. 10/892,159, over claims 1-38 and 45-48 of co-pending application No. 10/892,159 in view of BUISSON, and over claims 1-29 of co-pending application No. 10/953,587 in view of BUISSON.

Applicants note that the rejections are provisional (examination in the co-pending applications has not even commenced yet) and respectfully request that these rejections be held in abeyance until allowable subject matter has been indicated in the present application and in the co-pending applications. Only then will Applicants be in a position to decide whether it is necessary to file one or more terminal disclaimers in the present application or the co-pending applications.

CONCLUSION

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,
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